
**State Government Operations &
Accountability Committee**

HB 1445

Brief Description: Modifying state regulatory provisions for small businesses.

Sponsors: Representatives Chase, Skinner, DeBolt, Green, Kessler, Morrell, Newhouse, P. Sullivan, Conway, Eickmeyer, Kirby, B. Sullivan, Flannigan, Linville, Campbell, Clements, Kristiansen, Miloscia, McCune, Dunn, Pettigrew, Quall, Kenney, Simpson, Appleton, Moeller, Sells, Haler, Condotta, McDonald, Takko, Kagi, Kilmer and Clibborn.

Brief Summary of Bill

- Changes the situations under which an agency must develop a small business economic impact statement.
- Changes the information that must be contained in a small business economic impact statement.
- Changes the manner in which agencies must reduce impacts of rules on small businesses.
- Provides a method for affected parties to obtain judicial review of agency compliance with the Regulatory Fairness Act.
- Changes the manner in which agencies must review their rules.

Hearing Date: 2/16/05

Staff: Jim Morishima (786-7191).

Background:

I. Small Business Economic Impact Statements

Under the Regulatory Fairness Act (RFA), an agency must develop a small business economic impact statement (SBEIS) if a rule it is adopting under the Administrative Procedures Act (APA) will impose more than minor costs on businesses in an industry or if the agency is ordered to do so by the Joint Administrative Rules Review Committee (JARRC). The agency does not have to develop a SBEIS if a similar analysis was already conducted pursuant to the significant legislative rulemaking process or if the rule is:

- Proposed for expedited adoption or repeal;

- An emergency rule;
- A rule relating only to internal governmental operations;
- A rule that incorporates by reference without material change federal statutes or regulations, state statutes, rules of other agencies, certain shoreline master programs, or certain national consensus codes;
- A rule that only corrects typographical errors, makes address or name changes, or clarifies language;
- A rule the content of which is specifically dictated by statute;
- A rule that sets or adjusts fees or rates pursuant to legislative standards; or
- A rule that adopts, amends, or repeals a procedure, practice, or requirement relating to agency hearings or a filing or related process for applying for a license or permit.

A SBEIS must contain a variety of information, including:

- A brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule;
- A description of the professional services that a small business is likely to need in order to comply with the requirements of the proposed rule;
- An analysis of the costs of compliance;
- A consideration of whether the rule will cause businesses to lose sales or revenue;
- A determination of whether the rule has a disproportionate impact on small businesses. The determination must compare the cost of compliance on small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the rule. The agency must use at least one of the following measure when making this comparison: Cost per employee, cost per hour of labor, or cost per hundred dollars of sales;
- A description of how the agency will involve small businesses in the development of the rule; and
- A list of industries that will be required to comply with the rule.

If the SBEIS shows that a rule will have a disproportionate impact on small businesses, the agency must, where legal and feasible, reduce the costs imposed by the rule on small businesses. Methods the agency can use to do this include: Reducing, modifying, or eliminating substantive requirements; simplifying, reducing, or eliminating recordkeeping and reporting requirements; reducing the frequency of inspections; or reducing or modifying the fine schedule for noncompliance. The SBEIS must list the steps taken to reduce the costs on small businesses or a reasonable justification for not doing so.

II. Definitions

The RFA defines "small business" as any business entity, including a sole proprietorship, corporation, partnership, or other legal entity that is owned and operated independently from all other businesses and has 50 or fewer employees.

The APA defines "agency" as any state, board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the Governor, or the Attorney General except to the extent otherwise required by law.

The APA defines "rule" as any agency order, directive, or regulation of general applicability: (a) The violation of which subjects a person to a penalty or sanction, (b) that establishes, alters, or

revokes any procedure, practice, or requirement relating to agency hearings, (c) that establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law, (d) that establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession, or (e) that establishes, alters, or revokes any mandatory standards for any product or material that must be met before distribution or sale. There are several exclusions from the APA definition of "rule" including declaratory rulings, admissions standards at institutions of higher education, and statements concerning only the internal operation of agency.

III. Agency Review of Business Rules

Each agency must have a plan to periodically review its rules in order to minimize their impact on small businesses. When conducting the review, the agency must consider the continued need for the rule, the nature of complaints or comments received from the public, the extent to which the rule overlaps, duplicates, or conflicts with other state or federal rules, and to the extent feasible, with local government rules, and the degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule. Each agency is required to publish an annual list of rules to be reviewed during the year.

Summary of Bill:

I. Small Business Economic Impact Statements

An agency is required to develop a SBEIS when a proposed rule may have an adverse impact on small businesses. The ability for the JARRC to require a SBEIS to be developed is removed.

The contents of the SBEIS are expanded to include:

- An identification and estimate of the number of small businesses subject to the proposed rule;
- A statement of the probable effect of the rule on small businesses; and
- A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation or a reasonable justification for not doing so.

The requirement for an agency to reduce costs on small businesses is removed. Before the adoption of any rule, an agency must develop a regulatory flexibility analysis in which the agency must consider utilizing regulatory methods that will accomplish the objectives of the applicable statute while minimizing the impact on small businesses. The agency must consider the following methods of reducing the impact on small businesses:

- The establishment of less stringent compliance or reporting requirements for small businesses;
- The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- The consolidation or simplification of compliance or reporting requirements for small businesses;
- The establishment of performance standards for small businesses to replace design or operational standards required in the proposed rule; and
- The exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Prior to adoption of any proposed rule that may have an adverse impact on small businesses, each agency must notify the JARRC of its intent to adopt the proposed rule. The JARRC must advise and assist agencies in developing the regulatory flexibility analysis.

A business that is adversely affected or aggrieved by a final agency action is entitled to judicial review of agency compliance with the Regulatory Fairness Act. The right to seek review ends one year from the date of final agency action.

The Small Business Advocacy Committee (SBAC) is created. The committee is composed of the following seven members:

- Two members of the House of Representatives, one from each caucus, appointed by the Speaker of the house;
- Two members of the Senate, one from each caucus, appointed by the President of the Senate; and
- Three small business owners appointed by the Governor for two year terms. These small business owners must suggest replacements when their terms are up.

The SBAC must review SBEISs. If the committee finds that a rule will have an adverse impact on small businesses and that agency mitigation is insufficient, it may recommend that the JARRC conduct a public hearing on the rule.

II. Definitions

"Agency" is defined as any state board, commission, department, or officer authorized by law to adopt rules or to determine contested cases. "Rule" is defined as each agency statement of general applicability, without regard to designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. "Rule" does not include statements concerning only the internal management of any agency, declaratory rulings, or interagency or intra-agency memoranda. "Small business" is defined as any business entity, including its affiliates, that is owned and operated independently from all other businesses and has 50 or fewer employees or gross annual sales of less than \$6,000,000.

III. Agency Review of Business Rules

Beginning July 1, 2009, each agency must review all agency rules existing at the time of enactment to determine whether the rules should continue without change, or should be amended or repealed consistent with the Regulatory Fairness Act. If the head of the agency determines that the completion of the review of existing rules is not feasible by the established date, the agency must publish a statement certifying that determination. The agency may extend the completion date by one year at a time for a total of five years.

Rules adopted after the act's effective date must be reviewed within five years of publication and every five years thereafter. When reviewing a rule, the agency must consider:

- The continued need for the rule;
- The nature of the complaints or comments received concerning the rule;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates, or conflicts with other rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Appropriation: None.

Fiscal Note: Requested on February 10, 2005.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.